

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
KAREN R. BAKER, JUDGE

DIVISION III

CACR06-388

MARCH 14, 2007

DOMINIC WINFREY

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE ST. FRANCIS  
COUNTY CIRCUIT COURT  
[CR-2004-112]

HONORABLE HARVEY LEE YATES,  
JUDGE

AFFIRMED

A jury in St. Francis County Circuit Court convicted appellant, Dominic Winfrey, of rape and aggravated robbery. He was sentenced to a total of forty-three years' imprisonment in the Arkansas Department of Correction. Appellant's sole argument on appeal is that the trial court erred in refusing to dismiss selected jurors who read news articles about the accused. We find no error and affirm.

Jury selection began in this case on May 16, 2005. Initially, five jurors were selected. Before they were excused until 9:00 a.m. the next morning, the judge gave the following instruction:

You're not to discuss the case among yourselves. Don't allow anyone to discuss it in your presence, certainly no one with you. If anyone attempts to discuss it with you, you have an obligation to notify me, as the trial judge. Also, have no contact with any party, attorney or witness, not to even as much as pass the time of day. Even though I'm sure you've not discussed the case with them, it might appear that you were, and we want the case to appear to be fair as well as be fair. Okay, you're excused to be back in the morning at nine.

Later that day, further voir dire was conducted of a second jury panel, and five additional jurors were selected. They were also excused until 9:00 a.m. the next morning. Just before being dismissed, the trial judge gave the five additional jurors the same instruction as he had given the first five jurors, informing them that they were not to discuss the case with anyone.

As court resumed at 9:00 a.m. the next day, in the context of renewing a previously denied motion to change venue, defense counsel informed the court that an article describing allegations that appellant attempted to rape a woman in another county in 2003 had appeared on the front page of the newspaper the day before. To ensure that appellant received a fair trial, defense counsel wanted the opportunity to interview each of the jurors that had already been selected to determine if any of them had seen or read the article that was printed the day before. The prosecutor had no objection to this request. The trial court denied defense counsel's renewed motion to change venue, but allowed him to question the ten jurors about the article.

Defense counsel then questioned the ten jurors individually. Four of them denied reading the article. Two of the jurors, Johnson and Wilson, stated that they saw the headline in the newspaper, but did not read the article. Three of the jurors, Gray, Benson, and Harrell, stated that they saw and read the article. Mr. Gray told the court that he was willing to proceed as a juror in this case and that he would base his verdict strictly on what he heard in the courtroom, disregarding the information contained in the article. Ms. Benson told the court that she did not remember most of the information in the article, and she would be able to put any information that she did remember out of her mind as she made a decision in this case. Ms. Harrell stated that she would put aside any information she had received and that she would base her verdict only on evidence heard in the courtroom. One juror, Collins, denied that he read the newspaper article; however, he stated that he found and read an older article on the internet. Mr. Collins stated that while he had found the old article about the case on the

internet and read it, the article did not mention any names, and he had not formed any opinion about the case as a result of reading the article.

After Mr. Collins's statement, defense counsel requested a bench conference where he made a motion that Mr. Collins be dismissed as a juror. Defense counsel alleged that Mr. Collins should be dismissed because "this juror has gone out and actively sought information in regard to this trial outside of the evidence that's been—going to be presented." The trial judge denied defense counsel's motion. At the conclusion of the questioning of the ten selected jurors, defense counsel made a motion to quash the jury. The trial court denied the motion, and court was adjourned for the day.

The following day, defense counsel renewed his motion to remove Mr. Collins as a juror. Defense counsel stated, "I'm renewing my motion that, that juror, that particular juror be quashed on particular basis." This motion was again denied.

Appellant's sole argument on appeal is that the trial court erred in refusing to dismiss selected jurors who read the news articles about the accused. The United States and Arkansas Constitutions entitle a defendant to a fair trial. *Swindler v. State*, 267 Ark. 418, 592 S.W.2d 91 (1979). If, because of pretrial publicity, an impartial jury cannot be seated to try a defendant, his right to a fair trial is violated. *Id.* (citing *Irvin v. Dowd*, 366 U.S. 717 (1961)). It is well settled that the question of a juror's qualifications lies within the sound judicial discretion of the trial judge and that the appellant has the burden of showing the prospective juror's disqualification. *Miller v. State*, 8 Ark. App. 165, 649 S.W.2d 407 (1983). That discretion will not be disturbed unless it is abused. *Id.* The correct test is whether the prospective juror can lay aside any preconceived opinion and render a verdict based upon the evidence presented and the instructions of the court. *Montgomery v. State*, 277 Ark. 95, 640 S.W.2d 108 (1982). In *Swindler*, 267 Ark. at 425, 592 S.W.2d at 95, (quoting *Irvin*, 366 U.S. at 722-723), the court stated,

It is not required, however, that the jurors be totally ignorant of the facts and issues involved . . . To hold that the mere existence of any preconceived notion as to the guilt or innocence of the accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented at court.

To reject a potential juror, the judge must be satisfied that the juror's state of mind is such that he cannot render an impartial judgment and that seating him will result in substantial prejudice to the rights of the defendant. *Swindler*, 267 Ark. at 425, 592 S.W.2d at 95 (citing *Jones v. State*, 264 Ark. 935, 576 S.W.2d 198 (1979)).

The appellant had the burden of showing, by means of the voir dire examination, that the jurors should have been disqualified, *see Miller, supra*, and that burden was not met in this case. The record reflects that each of the ten selected jurors were questioned individually about the article that had been printed in the newspaper the day before. While three of the jurors stated that they had read the article in the newspaper, all three stated that they could put any information they obtained from the article aside in rendering a verdict. The fourth juror at issue, Mr. Collins, stated that he had read an old article regarding the case; however, the article did not mention any names, and most importantly, he had not formed any opinion based on what he had read. A mere reading of a newspaper account of an incident does not, in itself, disqualify a juror since the juror might be able to put aside any opinion formed. *See Freeman v. State*, 258 Ark. 496, 527 S.W.2d 623 (1975) (citing *Davis v. State*, 251 Ark. 771, 475 S.W.2d 155 (1972); *Glover v. State*, 248 Ark. 1260, 455 S.W.2d 670 (1970)).

None of the jurors in this case answered that they had formed an opinion based on the information they read about the case, whether from the newspaper or the internet. That fact easily distinguishes this case from a case such as *Glover v. State*, 248 Ark. 1260, 455 S.W.2d 670 (1970), where jurors ended the questioning by stating that they each had formed ideas and opinions about the

case based on the media attention and that it would take evidence to remove the opinions they had formed. A defendant is not entitled to a trial before a jury composed of people completely ignorant of the alleged crime. *Irvin*, 366 U.S. at 723. That would be virtually impossible in light of the availability of media coverage. *Anderson v. State*, 278 Ark. 171, 644 S.W.2d 278 (1983).

Moreover, appellant failed to show that he was prejudiced by the trial court's refusal to dismiss the four jurors. When a defendant argues that he was forced to accept a juror that he would have refused, he must show that the trial court would have excused the juror for cause, that the defendant had exhausted his peremptory challenges, and that he demonstrated prejudice in that he was forced to accept a juror against his wishes. *Smith v. State*, 90 Ark. App. 261, 205 S.W.3d 173 (2005) (citing *Noel v. State*, 28 Ark. App. 158, 771 S.W.2d 325 (1989)). Appellant has not shown that he was forced to accept any juror against his wishes. Clearly, appellant was allowed eight peremptory strikes in this case. See Ark. Code Ann. § 16-33-305(b) (Repl. 1999) (stating that the defendant shall be entitled to twelve (12) peremptory challenges in prosecutions for capital murder, to eight (8) peremptory challenges in prosecutions for all other felonies, and to three (3) peremptory challenges in prosecutions for misdemeanors). Appellant had four peremptory strikes remaining at the conclusion of the extended individual voir dire of the ten jurors, and he declined to exercise them on any of these jurors.

Based on the foregoing, we find no abuse of discretion on the part of the trial judge in not disqualifying the four selected jurors. See *Kellensworth v. State*, 276 Ark. 127, 633 S.W.2d 21 (1982) (finding that the trial court did not err in refusing to excuse jurors where it was shown that none of the jurors had formed an opinion about the accused).

GLOVER and MARSHALL, JJ., agree.